



UNITED STATES OF AMERICA
 OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1825 K STREET NW
 4TH FLOOR
 WASHINGTON, DC 20006-1246

FILE
 DON'T FORGET TO
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 OSHRC

SECRETARY OF LABOR
 Complainant,

v.

PARDY CONSTRUCTION CORPORATION
 Respondent.

OSHRC DOCKET
 NO. 92-1682

NOTICE OF DOCKETING
 OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on January 7, 1993. The decision of the Judge will become a final order of the Commission on February 8, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before January 27, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
 Occupational Safety and Health
 Review Commission
 1825 K St. N.W., Room 401
 Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
 Counsel for Regional Trial Litigation
 Office of the Solicitor, U.S. DOL
 Room S4004
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.
 Executive Secretary

Date: January 7, 1993

DOCKET NO. 92-1682

NOTICE IS GIVEN TO THE FOLLOWING:

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Patricia Rodenhausen, Esq.
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Donovan Morris, Office Manager
Pardy Construction Corporation
33-13 102nd Street
Corona, NY 11368

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 417/A
1825 K Street, N.W.
Washington, DC 20006 1246

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UNITED STATES OF AMERICA
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FAX:
 COM (202) 634-4008
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SECRETARY OF LABOR,

Complainant,

v.

PARDY CONSTRUCTION
 CORPORATION,

Respondent.

Docket No. 92-1682

Appearances:

Esther D. Curtwright, Esq.
 U.S. Department of Labor
 New York, New York
 For the Complainant

Donovan Morris
 Office Manager
 Corona, N.Y.
 For the Respondent

Before: Administrative Law Judge Irving Sommer

DECISION AND ORDER

Respondent was issued a serious citation and an other than serious citation on March 11, 1992. A hearing was held in New York, New York on October 22, 1992 concerning the motion of the Secretary to dismiss the Respondent's notice of contest as not being timely filed.

Diana Cortez, a safety supervisor in the Bayside, New York office of OSHA testified that the office records reveal that citations were issued to the Respondent on March 11, 1992, return receipt requested, and a green card evidencing their receipt was returned to said office on March 17, 1992. She stated that her office first ascertained that a contest had been filed on June 24, after the Respondent's letter to the Commission came to their

attention. Prior thereto, on May 26, 1992 she had spoken to Mr. Morris, the Respondent's representative at which time her records reflect the following notation, "Spoke to Donovan Morris office manager who requested a copy of citations because he could not locate his copy." (Exh. C-1) She testified he had not told her during their conversation that the citations had not been received in a timely fashion. (T-10)

Mr. Donovan testified he had not received the original citations, and made inquiries after another contractor on the same job told him they had been cited, and he then became "aware that we were supposed to be involved." (T-20) He further suggested that the citations sent may have been mistakenly taken by a doctor located in the basement of their office since at times they take each others mail. (T-25) He acknowledged there is a clerical in his office named Eartha Clarke who handles the mail and that the signature on the green card which signifies receipt of the citations does look like her signature. (T-18)

A careful analysis of the evidence, the testimony of the witnesses for each party compel the conclusion that the Respondent received the citations after March 11, 1992, and before March 17, 1992, and its filing of a notice of contest by letter dated May 13, 1992 and received on May 14, 1992, was untimely.

FINDINGS OF FACT

1. Citations were issued to the Respondent on March 11, 1992.
2. The citations were received by the Respondent after March 11, 1992 and before March 17, 1992.
3. The fifteen working day period during which the notice of contest was required to be filed ended no later than April 7, 1992.
4. The Respondent did not file a notice of contest until May 13, 1992.
5. The Respondent did not file a notice of contest within the fifteen working day period after receipt of the citations.
6. The late filing was due to the negligence of the Respondent in the disposition of the citation.

CONCLUSION OF LAW

The Respondent's notice of contest was untimely filed and is DISMISSED.

ORDER

The citations and proposed penalties are AFFIRMED in all respects.



IRVING SOMMER

Judge

DATED: JAN - 6 1993
Washington, D.C.